The facts, however, were very different in that case. In this connection I would refer to the following passage in the judgment of Maugham, L.J.:—

> "The facts are simple. Warbey was the owner of a motor car in respect of which he was insured as required by the Statute against (inter alia) the probability of third party risks when he himself or a member of his family was driving; but admittedly he was not insured against third party risks if some uninsured person was permitted by him to drive the car. Out of the kindesss of his heart, Warbey lent his car to the defendant Knowles. Knowles told Warbey that the third defendant May would drive the car and to that Warbey made no objection."

In this case the 1st defendant never permitted the 2nd defendant to use her car and, as stated before, would most certainly have not allowed it to be used for the purpose it was. I fail to see, therefore, how the 1st defendant can be held, under any provision of the Road Traffic Enactment, to be liable for the 2nd defendant's negligence, and the plaintiff's action against her must be dismissed.

As regards the 3rd defendant, at a very late stage in the trial Mr. Joaquim asked that the following amendment to his statement of claim be allowed:—

> "11A:—That the 3rd defendant is liable for the injuries which the plaintiff has sustained in that he permitted the 2nd defendant to use the said car in the absence of a policy of insurance in respect of third party risks contrary to section 51 of the Road Traffic Enactment 1937."

Mr. Hastings conceded that the Court had power to allow the amendment, and did not seriously oppose it. I therefore allowed it. I fail, however, to see how the 3rd defendant can be made liable on the authority of *Monk v. Warbey*[4]. In the first place the car was not his or lent to him, nor was he the agent of the 1st defendant for the purpose of permitting any other person to use the car. He certainly did not object to the 2nd defendant driving the car, and perhaps encouraged him to do so, but I cannot see that he thereby 'permitted' the 2nd defendant to drive the car within the meaning of the Road Traffic Enactment. To so hold would, in my opinion, be going far beyond any principle laid down in *Monk v. Warbey*[4]. Further, the 3rd defendant cannot be held liable for the 2nd defendant's negligence under any implied contract, for, under the local law a minor is not competent to contract.

For these reasons the plaintiff's action only succeeds against the 2nd defendant; and it only remains to consider what damages I should award her. This question according to the amended statement of plaint is largely academic, but I must direct my mind carefully to it. The plaintiff sustained serious injuries including a fracture of the skull; before the accident she earned $100 per mensem, and now she states that she cannot do the work she did before and suffers from giddiness and nervousness. This evidence was mostly unquestioned, and though no doubt she is exaggerating somewhat in regard to her physical condition now, she undoubtedly has suffered a lot of pain and would not be nearly as efficient a dance partner as before. Taking all the circumstances into account, I think $3,000.00 is a reasonable amount to award her. There will, therefore, be judgment for the plaintiff against the 2nd defendant for $3,000.00 and costs. Her action against the 1st and 3rd defendants is dismissed, and as regards the latter there will be no order as to costs. The 1st defendant is entitled to her costs, for, I cannot see that her conduct in any way justifies a departure from the ordinary rule. I can only express the hope, under the circumstances, that she will not enforce this order.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, J.

February 16, 1940.

IN RE THE ESTATE OF MURUGAPPA CHETTIAR ETC. DECEASED.

[SELANGOR ORIGINATING SUMMONS No. 20 of 1940]

Probate and Administration—Grant of Administration to attorney—death of one of grantors of power —grant not thereby revoked.

M.C. deceased died intestate in India leaving him surviving a widow and a son who jointly and severally appointed an agent in this country as their attorney to apply for Letters of Administration. The attorney acting under the power in his favour applied for and obtained a grant of Letters of Administration. Without completing the administration the attorney went to India and appointed a substitute, the applicant. Before the estate had been fully administered, the son, one of the grantors of the power of attorney, died. In an application to Court for determination of the question whether the grant of Letters of Administration had lapsed or was still of full force and effect.

Held, that the grant of Letters of Administration was still of full force and effect.

Cases referred to:—

(1) *In Re Dinshaw deceased,* (1930) 142 L.T. 652.

(2) *Pipon v. Wallis,* (1753) 161 E.R. 148.

ORIGINATING SUMMONS.

V. Mackie for the applicant.

The facts are sufficiently related in the head-note above.

Mackie for Administrator:—

A Power of Attorney ceases to be effective on the death of the donor (Powers of Attorney Enactment Cap. 66 sec. 4), but on the death of one of two joint and several donors, does not the Power of Attorney remain effective as regards the surviving donor?

Had Letters of Administration been granted to the widow and adopted son, then on the death of one of them the powers would have vested in the survivor (Probate and Administration Enactment Cap. 8 sec. 97).

In England the position has been altered by sec. 124 of the Law of Property Act 1925. Prior to that it appears to have been the practice to recognise as effective a Grant of Letters of Administration to an Attorney of the Executors notwithstanding the death of one of the Executors. *In the Estate of Dinshaw*[1]. (The Power of Attorney is there spoken of as a "joint" Power, not joint and several).

In *Pipon vs. Wallis*[2] two Executors appointed an Attorney who took out Letters of Administration. One Executor died. The other came to England and cited the Attorney to shew cause why the Letters of Administration should not be revoked and Probate issued to him. The Court revoked the Letters of Administration. Presumably, therefore, it had not already been revoked automatically by the death of one of the grantors of the Power of Attorney.

Gordon-Smith, J.—The question arising on this Originating Summons was as to whether a Grant of Letters of Administration in favour of the applicant, was still of full force and effect.

The deceased died intestate in India in January, 1938, leaving him surviving a widow and a son, both resident in India.

This widow and son executed jointly and severally a Power of Attorney in favour of K.R.R.M. Venkatachalam Chettiar who, under the powers therein, duly applied for and was granted Letters of Administration of the estate of the deceased.

Subsequently, and before completing the administration, Venkatchalam Chettiar went to India and under the Power of Attorney appointed a substitute, namely the applicant.

The estate is still not fully administered and in the meantime the son, one of the Grantors of the Power of Attorney, has died in India. The question arising therefrom is as to whether by such death the Power of Attorney has been revoked and whether, consequently the Grant of Letters of Administration thereunder is still of full force and effect.

It is quite clear that by the death of a grantor of a Power of Attorney such Power of Attorney is itself revoked but in the case before me there were two grantors, one of whom only has died and it was a joint and several appointment. I can see no reason why, in such case, a Power of Attorney should itself be revoked, nor can I find any case bearing exactly on the point. It appears that in England, anyhow since section 124 of the Law of Property Act 1925 came into effect, the position is somewhat different. This position was discussed by Lord Merrivale in *In the Estate of Dinshaw*[1]. In that case, two Executors living abroad gave a Power of Attorney to a Solicitor resident in England who under Power obtained Letters of Administration with the Will annexed. One of the Executors died and on application on behalf of the surviving Executor under the Power, made to the Probate Registry for revocation of the Grant and the issue of a fresh Grant, such application was refused on the ground that according to the practice of the Probate Registry the existing Grant still remained operative notwithstanding the death of one of the Executors. Subsequently and by reason of a requisition on title which raised the point of the power of the attorney to execute a conveyance, the matter came to Court. The surviving Executor gave a fresh power to the same attorney who applied to the Court for revocation of the existing grant and the issue of a fresh Grant.

It was held that on the death of the one Executor the Power of Attorney was revoked in so far as the undischarged functions were concerned and that on a new power being given the existing Grant of Letters of Administration should be brought in to the Registry for cancellation and a new Grant should be issued under the fresh Power of Attorney.

As I have said, the Law of Property Act 1925, which is not in force or effect here, affected the matter, and there do not appear to be any earlier cases on all fours with the facts in this case which are at all helpful.

If the appointment had been only a joint appointment and not a joint and several one, it might have affected the matter but the widow herself was one of the persons entitled to a grant and she is now the principal person entitled to such a grant and has already

and previously authorised a person to obtain such Grant on her behalf.

I can see no reason for holding that the Grant of Letters of Administration has lapsed or is not fully effective and the question is decided accordingly.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J.

January 19, 1940.

PUBLIC PROSECUTOR v. BAHADAR KHAN.

[KUALA LIPIS MAGISTRATE'S CRIMINAL APPEAL No. 5 of 1939]

Penal Code, S. 186—obstructing public servant in discharge of his public functions.

Obstruction in Section 186 of the Penal Code, means some interruption or hindrance to the progress of work being carried out by a public servant in the discharge of his public duties, and such public servant may be directly or indirectly obstructed.

MAGISTRATE'S CRIMINAL APPEAL.

T. D. Wallace, Deputy Public Prosecutor, for the Public Prosecutor.

A. K. Sen, for Respondent.

Poyser, C.J.—The respondent was charged with an offence under section 186 of the Penal Code, and acquitted. The Public Prosecutor appeals against such acquittal. The facts are as follows.

Lamin bin Kassim, an Assistant Superintendent of Police, went to Kuala Lipis prison on the 21st of July 1939 to investigate a charge of theft He there interviewed the Chief Clerk, the witness Vallipuram, and asked him to write out a statement; he then went to the guard-room to record other statements. Vallipuram wrote out his statement, and was going to the guard-room to hand it over, when the respondent, a warder, asked him to go back to the office, and on his doing so snatched the statement that had been written, tore it and threw it on the ground. Lamin was then sent for, and the respondent on being asked why he did such a thing stated he did it "for fun".

At the trial the respondent was defended, and it was submitted on his behalf, at the close of the evidence for the prosecution:—

> "That a police officer when exercising the powers conferred upon him by section 112 of the Criminal Procedure Code is not empowered to delegate them and that therefore no obstruction of Vallipuram while so delegated could operate as an obstruction of the Assistant Superintendent of Police."

The Magistrate agreed with this submission and discharged the respondent.

I think the Magistrate was wrong, and should have called on the respondent for his defence. Lamin bin Kassim had not delegated his powers; if he had directed Vallipuram to record the statements of other witnesses, and when so doing Vallipuram had been so obstructed, there would have been considerable substance in the submission on behalf of the respondent. Vallipuram, however, was not exercising delegated powers; he was only recording his own statement on the instructions of an investigating officer.

Section 112 of the Criminal Procedure Code no doubt contemplates that a statement shall be recorded by the investigating officer himself or in his presence. The question of the irregularity of the statement does not, however, arise; the question is whether there was obstruction of a public servant or not. In my opinion there was. Obstruction, in section 186 of the Penal Code, means some interruption or hindrance to the progress of work being carried out by a public servant in the discharge of his public duties, and such public servant may be directly or indirectly obstructed. This was a case of indirect obstruction, and one can think of a number of ways in which an investigating officer could be indirectly obstructed, *e.g.* if Vallipuram had been sent for to have his statement recorded, and the respondent, being aware of that fact, prevented his going, this would be obstruction within the meaning of section 186.

Although I think the Magistrate was wrong in law, I cannot direct a verdict of guilty to be entered, as the respondent was not called on for his defence. Moreover, I do not think this is an appropriate case to be sent back for further proceedings; it was stated during the hearing of this appeal that the respondent had been departmentally dealt with and the Public Prosecutor was principally concerned with the legal aspect of the case. In view of the above, the appeal will be *pro forma* dismissed.

Appeal dismissed.